

**U.S. District Court
Northern District of Ohio (Akron)
CIVIL DOCKET FOR CASE #: 5:10-cv-02218-PAG
Internal Use Only**

Patcap, LLC v. Continental Disc Corporation
Assigned to: Judge Patricia A. Gaughan
Cause: 35:183 Patent Infringement

Date Filed: 09/30/2010
Date Terminated: 02/03/2011
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: U.S. Government Plaintiff

Plaintiff

Patcap, LLC

represented by **Mark J. Skakun, III**
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Patent #
4,597,505
4,512,171
4,072,160
4,669,626
4,759,460
RE34,308
4,342,988
4,408,194
3,445,032
3,881,629

V.

Defendant

Continental Disc Corporation

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**PATCAP, LLC
c/o BDB AGENT CO.
3800 Embassy Parkway, Suite 300
Akron, Ohio 44333**

Relator

vs.

**CONTINENTAL DISC
CORPORATION
3160 W. Heartland Drive
Liberty, MO 64068-3385**

Defendant.

CASE NO.:

JUDGE:

COMPLAINT AND JURY DEMAND

COMPLAINT AND JURY DEMAND

Qui tam relator PatCap, LLC ("PatCap"), for its Complaint against Defendant Continental Disc Corporation ("Defendant"), alleges as follows:

BACKGROUND

1. This is an action for false patent marking under Title 35, Section 292, of the United States Code.
2. Defendant has marked upon, affixed to, and/or used in advertising in connection with such products the word "patent" and/or words or numbers importing that the product is patented, while Defendant knew that the articles were improperly marked. *See, The Forest Group, Inc. v. Bon Tool Co.*, 590 F.2d 1295, 1302-04 (Fed. Cir., 2009). More specifically, Defendant has violated 35 U.S.C. § 292(a) by using invalid and unenforceable patent rights in advertising with the purpose of deceiving the public.

3. 35 U.S.C. § 292 exists to provide the public with notice of a party's valid and enforceable patent rights.

4. False marking deters innovation and stifles competition in the marketplace. More specifically, falsely marked articles that are otherwise within the public domain deter potential competitors from entering the same market and confuse the public.

5. False marks may also deter scientific research when an inventor sees a mark and decides to forego continued research to avoid possible infringement.

6. False marking can cause unnecessary investment in costly "design arounds" or result in the incurring of unnecessary costs to analyze the validity or enforceability of a patent whose number has been marked upon a product with which a competitor would like to compete.

7. False marking deceives the public into believing that a patentee controls the article in question, and permits the patentee to impermissibly extend the term of its monopoly.

8. False marking also increases the cost to the public of ascertaining whether a patentee in fact controls the intellectual property embodied in an article. More specifically, in each instance where it is represented that an article is patented, a member of the public desiring to participate in the market for the marked article must incur the cost of determining whether the involved patents are valid and enforceable.

9. False markings may also create a misleading impression that the falsely marked product is technologically superior to other available products, as articles bearing the term "patent" may be presumed to be novel, useful, and innovative.

10. 35 U.S.C. § 292 specifically authorizes *qui tam* actions to be brought by any person on behalf of the United States government. By permitting members of the public to sue on

behalf of the government, Congress allows individuals to help control false marking when the U.S. government does not have the resources to do so.

THE PARTIES

11. PatCap, LLC is an Ohio limited liability company with a mailing address of c/o BDB Agent Co., 3800 Embassy Parkway, Akron, Ohio 44333.

12. PatCap exists to conduct all lawful business, including but not limited to enforcing the false marking statute as specifically permitted by 35 U.S.C. § 292.

13. In this action, PatCap represents the United States and the public, including Defendant's existing and future competitors.

14. Upon information and belief, Continental Disc Corporation is a Missouri corporation with its principal place of business at 3160 W. Heartland Drive, Liberty, MO 64068-3385.

15. Upon information and belief, Defendant, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units, regularly conducts and transacts business throughout the United States, including in Ohio and within the Northern District of Ohio.

JURISDICTION AND VENUE

16. This Court has exclusive jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

17. This Court has personal jurisdiction over Defendant. Defendant has conducted and does conduct business within the State of Ohio. Defendant, directly or through subsidiaries or intermediaries, offers for sale, sells, marks and/or advertises the products that are the subject of this Complaint in the United States, the State of Ohio, and the Northern District of Ohio.

18. Upon information and belief, Defendant has voluntarily sold the products that are the subject of this Complaint in this District, either directly to customers in this District or through intermediaries with the expectation that the products will be sold and distributed to customers in this District. These products have been and continue to be purchased and used by consumers in the Northern District of Ohio. Defendant has committed acts of false marking within the State of Ohio and, more particularly, within the Northern District of Ohio.

19. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1395(a), because (i) Defendant's products that are the subject matter of this cause of action are advertised, marked, offered for sale, and/or sold in various retail stores and/or on the Internet in this District; (ii) a substantial part of the events or omissions giving rise to the claim occurred in this District; and (iii) Defendant is subject to personal jurisdiction in this District, as described above.

20. PatCap brings this action under 35 U.S.C. § 292, which expressly provides that any person may sue for the civil monetary penalties imposed for each false patent marking offense.

FACTS

21. PatCap incorporates by reference the foregoing paragraphs as if fully set forth herein.

22. Upon information and belief, Defendant is a relatively large, sophisticated company.

23. Upon information and belief, Defendant has, or regularly retains, sophisticated legal counsel, including intellectual property counsel.

24. Upon information and belief, Defendant, and its related entities, have years of experience applying for patents, obtaining patents, licensing patents, litigating in patent infringement lawsuits, marking its products with patents, and advertising its products as "patented".

25. Upon information and belief, Defendant maintains, or its intellectual property

counsel maintains on Defendant's behalf, an intellectual property docketing system with respect to Defendant's intellectual property rights, including Defendant's patents.

26. Defendant regularly uses the terms "patent" or "patent pending", or other words or numbers importing that a product is covered by a valid and enforceable patent, in the advertising of its products for sale.

27. Defendant knows that 35 U.S.C. § 292 prohibits a person from marking a product with an expired patent number.

28. Each false marking on the products identified in this Complaint is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

29. Defendant's false marking of its products has wrongfully stifled competition with respect to such products thereby causing harm to PatCap, the United States, and the public.

30. Defendant has wrongfully and illegally advertised patent monopolies which it does not possess and, as a result, has benefited by maintaining a substantial market share with respect to the products referenced in this Complaint.

31. Defendant has violated 35 U.S.C. § 292, which prohibits a person from marking a product with an expired patent number.

COUNT 1

FALSE MARKING

32. PatCap incorporates by reference the foregoing paragraphs as if fully set forth herein.

33. The application for United States Patent No. 4,597,505 (the "'505 Patent"), titled *Rupture disc with selectively positioned initial buckling*, was filed on April 9, 1984 and issued by the United States Patent and Trademark Office ("USPTO") on July 1, 1986. See Exhibit A.

34. The '505 Patent expired no later than April 9, 2004, more than 6 years ago.

35. Defendant knew that the '505 Patent expired at least as early as 2004.

36. The application for United States Patent No. 4,512,171 (the "'171 Patent"), titled *Method for forming rupture disc*, was filed on September 20, 1983 and issued by the USPTO on April 23, 1985. See Exhibit B.

37. The '171 Patent expired no later than September 20, 2003, more than 6 years ago.

38. Defendant knew that the '171 Patent expired at least as early as 2003.

39. The application for United States Patent No. 4,072,160 (the "'160 Patent"), titled *Scored reverse buckling rupture disc assembly*, was filed on October 26, 1976 and issued by the USPTO on February 7, 1978. See Exhibit C.

40. The '160 Patent expired no later than October 26, 1996, more than 13 years ago.

41. Defendant knew that the '160 Patent expired at least as early as 1996.

42. The application for United States Patent No. 4,669,626 (the "'626 Patent"), titled *Rupture disc with selectively positioned initial buckling*, was filed on September 20, 1983 and issued by the USPTO on June 2, 1987. See Exhibit D.

43. Upon information and belief, the '626 Patent expired no later than July 1, 2003, more than 7 years ago, due to Defendant disclaiming the subsequent portion of the term thereof. See Exhibit D.

44. Defendant knew that the '626 Patent expired at least as early as 2003.

45. The application for United States Patent No. 4,759,460 (the "'460 Patent"), titled *Rupture disc system*, was filed on December 22, 1986 and issued by the USPTO on July 26, 1988. See Exhibit E.

46. Upon information and belief, the '460 Patent expired no later than July 1, 2003, more than 7 years ago, due to Defendant disclaiming the subsequent portion of the term thereof. See Exhibit E.

47. Defendant knew that the '460 Patent expired at least as early as 2003.

48. The application for United States re-examination Patent No. RE34,308 (the "'308 Patent"), titled *Rupture disc alarm system*, was filed in January 11, 1991 and issued by the USPTO on July 13, 1993. The '308 Patent is related to United States Patent No. 4,342,988, which was originally filed in January, 1980 and issued by the USPTO in August, 1982. See Exhibit F.

49. The '308 Patent expired no later than January, 2000, more than 10 years ago.

50. Defendant knew that the '308 Patent expired at least as early as 2000.

51. The application for United States Patent No. 4,408,194 (the "'194 Patent"), titled *Capacitive pressure relief rupture disc monitor*, was filed on February 2, 1981 and issued by the USPTO on October 4, 1983. See Exhibit G.

52. The '194 Patent expired no later than February 2, 2001, more than 9 years ago.

53. Defendant knew that the '194 Patent expired at least as early as 2001.

54. The application for United States Patent No. 3,445,032 (the "'032 Patent"), titled *Safety pressure relief device*, was filed on November 21, 1966 and issued by the USPTO on May 20, 1969. See Exhibit H.

55. The '032 Patent expired no later than November 21, 1986, more than 23 years ago.

56. Defendant knew that the '032 Patent expired at least as early as 1986.

57. The application for United States Patent No. 3,881,629 (the "'629 Patent"), titled *Self-aligning rupture disc*, was filed on September 4, 1973 and issued by the USPTO on May 6,

1975. See Exhibit I.

58. The '629 Patent expired no later than September 4, 1993, more than 17 years ago.

59. Defendant knew that the '629 Patent expired at least as early as 1993.

60. As of September 30, 2010, Defendant continues to use the '505 Patent, the '171 Patent, the '160 Patent, the '626 Patent and the '460 Patent in advertising in connection with the following products (collectively, the "SANITRX Products") made, used, offered for sale or sold by Defendant within the United States, despite the fact that the '505 Patent expired more than 6 years ago, the '171 Patent expired more than 6 years ago, the '160 Patent expired more than 13 years ago, the '626 Patent expired more than 7 years ago, and the '460 Patent expired more than 3 years ago: (i) SANITRX Rupture Discs; and (ii) SANITRX LP Rupture Discs. See Exhibit J (Defendant's advertisement for the SANITRX Products (the "SANITRX Catalog"), which is available at http://www.contdisc.com//IM_Uploads/doclib_55_CDC%20SANITRX%20Rupture%20Disc.pdf (last retrieved September 30, 2010)).

61. Upon information and belief, Defendant continues to mark upon the SANITRX Products, or the packaging of the SANITRX Products, the '505 Patent, the '171 Patent, the '160 Patent, the '626 Patent and the '460 Patent, despite knowing that said patents expired several years ago.

62. Defendant updated the SANITRX Catalog, including its copyright notice, at least as recently as 2005 but, upon information and belief, purposefully continued to use the '505 Patent, the '171 Patent, the '160 Patent, and the '626 Patent in advertising the SANITRX Products with the intent to deceive the public, despite knowing that said patents had expired.

63. Defendant knew or should have known that the use of expired and invalid patents in advertising of the SANITRX Products and marking the SANITRX Products with expired and invalid patents violates 35 U.S.C. § 292, which only authorizes marking on a "patented" article.

64. Defendant intended to deceive the public by using expired patents in advertising in connection with the SANITRX Products and marking or causing to be marked the SANITRX Products with expired patents, despite knowing that the '505 Patent, the '171 Patent, the '160 Patent, the '626 Patent and the '460 Patent were expired and unenforceable.

65. As of September 30, 2010, Defendant continues to use the '505 Patent, the '171 Patent, the '160 Patent, the '626 Patent and the '460 Patent in advertising in connection with the following products (collectively, the "Reverse Acting Products") made, used, offered for sale or sold by Defendant within the United States, despite the fact that the '505 Patent expired more than 6 years ago, the '171 Patent expired more than 6 years ago, the '160 Patent expired more than 13 years ago, the '626 Patent expired more than 6 years ago, and the '460 Patent expired more than 3 years ago: (i) ULTRX Reverse Acting Rupture Discs; (ii) MINTRX Reverse Acting Rupture Discs; and (iii) STAR X Reverse Acting Rupture Discs. *See Exhibit K* (Defendant's advertisement for the Reverse Acting Products (the "Reverse Acting Catalog"), which is available at http://www.contdisc.com/IM_Uploads/DocLib_276_Reverse%20Acting.pdf (last retrieved September 30, 2010)).

66. Upon information and belief, Defendant continues to mark upon the Reverse Acting Products, or the packaging of the Reverse Acting Products, the '505 Patent, the '171 Patent, the '160 Patent, the '626 Patent and the '460 Patent, despite the fact that the '505 Patent expired more than 6 years ago, the '171 Patent expired more than 6 years ago, the '160 Patent expired more than 13 years ago, the '626 Patent expired more than 6 years ago, and the '460 Patent expired more than 3 years ago.

67. Defendant updated the Reverse Acting Catalog, including its copyright notice, at least as recently as 2007 but, upon information and belief, purposefully continued to use the '505 Patent, the '171 Patent, the '160 Patent, the '626 Patent and the '460 Patent to advertise the Reverse Acting Products with the intent to deceive the public, despite knowing that said patents had expired.

68. Defendant knew or should have known that the use of expired and invalid patents in advertising of the Reverse Acting Products and marking the Reverse Acting Products with expired and invalid patents violates 35 U.S.C. § 292, which only authorizes marking on a "patented" article.

69. Defendant intended to deceive the public by using expired and unenforceable patents in advertising in connection with the Reverse Acting Products and marking or causing to be marked the Reverse Acting Products with such patents, despite knowing that the '505 Patent, the '171 Patent, the '160 Patent, the '626 Patent and the '460 Patent expired years ago.

70. As of September 30, 2010, Defendant continues to use the '032 Patent in advertising in connection with the following products made, used, offered for sale or sold by Defendant within the United States, despite the fact that the '032 Patent expired more than 23 years ago: (i) Composite Rupture Discs (the "Composite Disc Product"); and (ii) Unisert Assembly (the "Unisert Product"). *See Exhibit L* (Defendant's advertisement for the Composite Disc Product (the "Composite Disc Catalog"), which is available at http://www.contdisc.com/IM_Uploads/DocLib_176_CDC%20Composite%20Rupture%20Disc.pdf (last retrieved September 30, 2010)); and *Exhibit M* (Defendant's advertisement for the Unisert Product (the "Unisert Catalog"), which is available at http://www.contdisc.com/IM_Uploads/DocLib_180_LIT0292.pdf (last retrieved September 30, 2010)).

71. Upon information and belief, Defendant continues to mark upon the Composite Disc Product, or the packaging of the Composite Disc Product, the '032 Patent, despite the fact that the '032 Patent expired more than 23 years ago.

72. Defendant updated the Composite Disc Catalog, including its copyright notice, at least as recently as 2004 but, upon information and belief, purposefully continued to use the '032 Patent in the Composite Disc Catalog to advertise the Composite Disc Product with the intent to deceive the public, despite knowing the '032 Patent had expired.

73. Defendant knew or should have known that the use of an expired and invalid patent in advertising of the Composite Disc Product and marking the Composite Disc Product with an expired and invalid patent violates 35 U.S.C. § 292, which only authorizes marking on a "patented" article.

74. Defendant intended to deceive the public by using an expired and unenforceable patent in advertising in connection with the Composite Disc Product and marking or causing to be marked the Composite Disc Product with such a patent, despite knowing that the '032 Patent had expired.

75. Upon information and belief, Defendant continues to mark upon the Unisert Product, or the packaging of the Unisert Product, the '032 Patent, despite the fact that the '032 Patent expired more than 23 years ago.

76. Defendant updated the Unisert Catalog, including its copyright notice, at least as recently as 2005 but, upon information and belief, purposefully continued to use the '032 Patent in the Unisert Catalog to advertise the Unisert Product with the intent to deceive the public, despite knowing the '032 Patent had expired.

77. Defendant knew or should have known that the use of an expired and invalid patent in advertising of the Unisert Product and marking the Unisert Product with an expired and invalid patent violates 35 U.S.C. § 292, which only authorizes marking on a "patented" article.

78. Defendant intended to deceive the public by using an expired and unenforceable patent in advertising in connection with the Unisert Product and marking or causing to be marked the Unisert Product with such a patent, despite knowing that the '032 Patent had expired.

79. As of September 30, 2010, Defendant continues to use the '629 Patent in advertising in connection with the following product (the "Tanksert Product") made, used, offered for sale or sold by Defendant within the United States, despite the fact that the '629 Patent expired more than 17 years ago: Tanksert Rupture Disc. *See Exhibit N* (Defendant's advertisement for the Tanksert Product (the

"Tanksert Catalog"), which is available at http://www.contdisc.com/IM_Uploads/doclib_64_Tanksert%20bulletin%2073-300.pdf (last retrieved September 30, 2010)).

80. Upon information and belief, Defendant continues to mark upon the Tanksert Product, or the packaging of the Tanksert Product, the '629 Patent, despite the fact that the '629 Patent expired more than 17 years ago.

81. Defendant knew or should have known that the use of an expired and invalid patent in advertising of the Tanksert Product and marking the Tanksert Product with an expired and invalid patent violates 35 U.S.C. § 292, which only authorizes marking on a "patented" article.

82. Defendant intended to deceive the public by using expired patents in advertising in connection with the Tanksert Product and marking or causing to be marked the Tanksert Product with expired patents, despite knowing that the '629 Patent had expired.

83. As of September 30, 2010, Defendant continues to use the '308 Patent and the '194 Patent in advertising in connection with the following product (the "BDI Product") made, used, offered for sale or sold by Defendant within the United States, despite the fact that the '308 Patent expired more than 10 years ago and the '194 Patent expired more than 9 years ago: Burst Disc Indicator Alarm System. See Exhibit J at p. 5; Exhibit M at p. 6; Exhibit L at p. 4; and Exhibit Q (Defendant's advertisement for the BDI Product (the "BDI Catalog"), which is available at http://www.contdisc.com/IM_Uploads/DocLib_181_CDC%20BDI%20Bulletin.pdf (last retrieved September 30, 2010)).

84. Upon information and belief, Defendant continues to mark upon the BDI Product, or the packaging of the BDI Product, the '308 Patent and the '194 Patent, despite the fact that the '308 Patent expired more than 10 years ago and the '194 Patent expired more than 9 years ago.

85. Defendant updated the SANITRX Catalog and Unisert Catalog, including its copyright notice, at least as recently as 2005 but, upon information and belief, purposefully continued to use the

'308 Patent and the '194 Patent in advertising the BDI Product with the intent to deceive the public, despite knowing the '308 Patent and the '194 Patent had expired.

86. Defendant updated the Composite Disc Catalog, including its copyright notice, at least as recently as 2004 and purposefully continued to use the '308 Patent and the '194 Patent in advertising the BDI Product with the intent to deceive the public, despite knowing the '308 Patent and the '194 Patent had expired.

87. Defendant updated the BDI Catalog, including its copyright notice, at least as recently as 2007 but, upon information and belief, purposefully continued to use the '308 Patent and the '194 Patent in advertising the BDI Product with the intent to deceive the public, despite knowing the '308 Patent and the '194 Patent had expired.

88. Defendant knew or should have known that the use of expired and invalid patents in advertising of the BDI Product and marking the BDI Product with expired and invalid patents violates 35 U.S.C. § 292, which only authorizes marking on a "patented" article.

89. Defendant intended to deceive the public by using expired and unenforceable patents in advertising in connection with the BDI Product and marking or causing to be marked the BDI Product with such patents, despite knowing that the '308 Patent and the '194 Patent had expired.

PRAYER FOR RELIEF

WHEREFORE, Relator, PatCap, LLC requests the Court, pursuant to 35 U.S.C. § 292, to:

- A. Enter judgment against Defendant and in favor of PatCap for the violations alleged in this Complaint;
- B. Enter an injunction prohibiting Defendant, and its officers, directors, agents,

servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from further violating 35 U.S.C. § 292 by using the '505 Patent, the '171 Patent, the '160 Patent, the '626 Patent, the '460 Patent, the '380 Patent, the '194 Patent, the '032 Patent and/or the '629 Patent in advertising, or marketing, selling or offering for sale any product that is marked (including packaging) with the '505 Patent, the '171 Patent, the '160 Patent, the '626 Patent, the '460 Patent, the '380 Patent, the '194 Patent, the '032 Patent and/or the '629 Patent;

C. Enter an injunction ordering Defendant to recall all products, including, without limitation, the SANITRX Products, the Reverse Acting Products, the Composite Disc Product, the Unisert Product, the Tanksert Product, and the BDI Product, that Defendant has sold, caused to be sold or otherwise caused to be placed into commerce that were marked with the '505 Patent, the '171 Patent, the '160 Patent, the '626 Patent, the '460 Patent, the '380 Patent, the '194 Patent, the '032 Patent and/or the '629 Patent, after the expiration date of said patents;

D. Order Defendant to pay a civil monetary fine of up to \$500 per false marking violation, one-half of which shall be paid to the United States and one-half of which shall be paid to PatCap;

E. Enter a judgment and order requiring Defendant to pay PatCap prejudgment and post-judgment interest on the damages awarded;

F. Order Defendant to pay PatCap's costs and attorney fees; and

G. Grant PatCap such other and further relief as it may deem just and equitable.

DEMAND FOR JURY TRIAL

Relator demands a trial by jury of any and all issues triable of right by a jury in the above-captioned action.

DATED: September 30, 2010

Respectfully submitted:

/s/ David J. Hrina

Mark J. Skakun, III (No. 0023475)
David J. Hrina (No. 0072260)

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Counsel for Plaintiff
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«AK3:I040534_v1»

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

| | | |
|-------------------------------------|---|--------------------------------|
| PATCAP, LLC |) | |
| |) | |
| Relator |) | CASE NO.: 5:10-cv-02218 |
| |) | |
| vs. |) | JUDGE GAUGHAN |
| |) | |
| CONTINENTAL DISC CORPORATION |) | |
| |) | |
| Defendant. |) | |

STIPULATIONS AND ORDER OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, Plaintiff/Relator Patcap, LLC ("PCL"), acting on behalf of itself, as a member of the general public, and as a *qui tam* realtor on behalf of the United States of America, and Defendant Continental Disc Corporation ("CDC") jointly stipulate that PCL and CDC have executed a Settlement Agreement and Mutual Release (the "Settlement Agreement") resolving the claims asserted by PCL on behalf of itself, the United States of America ("United States"), and the general public, against CDC in the above captioned matter without any admission of liability. PCL, the United States, the general public, and Defendant are jointly referred to herein as the "Parties".

The Parties further stipulate that any and all claims by PCL, on behalf of itself, as a member of the general public, and as a *qui tam* relator on behalf of the United States, regarding CDC's alleged false marking or advertising or causing or contributing to false marking or advertising under 35 U.S.C. §292 (or any other federal statute) of any product manufactured or sold with any of the Patents (as hereinafter defined) affixed thereon or on associated packing are fully resolved and should be dismissed with prejudice.

The Parties further stipulate that to the extent that any other claims for false marking or advertising under 35 U.S.C. §292 exist against CDC, related to the Patents which could be brought by or on behalf of the United States or the general public, such claims should be dismissed with prejudice.

The Parties further stipulate that any future litigation brought against CDC under 35 U.S.C. §292 or any other statute related to false marking or false advertising on behalf of the United States and/or the general public with regard to U.S. Patent Nos. 4,597,505; 4,512,171; 4,072,160; 4,669,626; 4,759,460; RE34,308; 4,342,988; 4,408,194; 3,445,032; 3,881,629; 4,079,854; 4,498,261; 4,119,236; and 4,621,739 (collectively, the "Patents") are barred.

The Parties further stipulate that CDC and those acting in concert therewith and/or selling products manufactured by CDC may have a reasonable period of time in which to sell inventory or use marketing and advertising materials that have been marked with one or more of the Patents on or before the date of this entry without further liability.

Based on these stipulations and the agreement of the Parties, the Court approves and hereby does dismiss all claims asserted in this action with prejudice.

DATED: February 1, 2011

/s/ Patricia A. Gaughan
Judge Patricia A. Gaughan

APPROVED:

/s/ David J. Hrina
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David J. Hrina (No. 0072260)
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